

RESEARCH ROUND UP

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SCHOOL OF LAW

This newsletter celebrates some of the research activity taking place in the School of Law, Northumbria University, focussing on published outputs, conference papers and other outward facing research related activities. This fifth issue captures outputs from the start of November 2016 to end of January 2017

Publications

Gita Gill

Book: *Environmental Justice in India: The National Green Tribunal* (Routledge UK- Earthscan, Environmental and Sustainability Development Studies, 2017)

Abstract: This book explores the genesis, operation and effectiveness of the National Green Tribunal India and has four key objectives:

- * To examine the importance of access to justice in environmental matters promoting sustainability and good governance;
- * To provide an analytical and critical account of the judicial structures that offer access to environmental justice in India;
- * To analyse the establishment, working practice and effectiveness of the NGT aimed to advance distinctively green jurisprudence in India; and
- * To present and review the success and external challenges faced and overcome by the NGT resulting in growing usage and public respect for the NGT's commitment to environmental protection and the welfare of the most affected people.

Ray Arthur

Book: *The Moral Foundations of the Youth Justice System* (Routledge, 2017)

Abstract: Legal theorists have not systematically applied themselves to questions such as, if young people lack the capacity to make a meaningful choice and to control their impulses, should they be held criminally culpable for their behaviour? In what ways is the immaturity of young offenders relevant to their blameworthiness? Should youth offending behaviour be proscribed by criminal law? The book seeks to address these questions by exploring international and historical evidence on how societies regulate criminal behaviour by young people and undertaking a careful examination of the developmental capacities and processes that are relevant to young people's criminal choices. The book will examine the following questions:

- * Why do we attribute criminal responsibility to children and young people?
- * What is the function of the criminal law/criminal justice system and how does it apply to young people?
- * Are young people fully responsible moral and legal agents?
- * In what way is immaturity relevant to blameworthiness?

This book argues that the youth justice response needs to be reconceptualised in a context where one of the central objectives of institutions regulating children and young people's behaviour is to support the interests and welfare of those children, unlike traditional criminal law which focusses upon providing redress, and retribution, against harm to others via punishment. If institutions

addressing children and young people had a different conception of the implication of responsibility for children, from the implications of responsibility for adults, and were oriented towards the welfare of all children including victims and offenders, these objectives could be realised and could encourage changes in the cultural perceptions of young people who break the law.

Chrisje Brants, Adam Jackson and Frans Koenraadt

Article: 'Culpability compared: Mental capacity, criminal offences and the role of the expert in common law and civil law jurisdictions'

In (2016) 3(2) *Journal of International and Comparative Law* 411-440

Abstract: This article compares the situation in which an individual with diminished mental capacity is prosecuted for a criminal offence in England and Wales and in the Netherlands, with a particular focus on the role of the expert medical witness.

It is not unreasonable to assume that, whatever the jurisdiction, the existence of a condition affecting the mental capacity of the defendant may affect how the culpability of the accused is assessed by the courts and translated into a verdict. By comparing culpability in the context of the role of experts, consideration will be given to how substantive and procedural law hang together in the different jurisdictions. A comparison between England and Wales (as an example of a common law jurisdiction) and the Netherlands (as an example of a civil law jurisdiction) may reveal very different outcomes with regard to the verdict and the way it is reached that have far-reaching consequences for the person involved. This article will examine why such differences may occur, in particular whether they are the result of the common law's reliance on just two possible reasons for the absence of culpability in such cases (insanity or automatism, or, conceivably, diminished responsibility if murder is the charge), while the civil law is based on a theoretically underpinned doctrine that allows for a greater range of defences with regard to culpability (and its relative absence) in general.

The topic not only has possible practical implications, but could also contribute to the growing body of comparative scholarship: comparisons of substantive criminal law, unlike its many procedural aspects, are few and far between. One of the reasons is that substantive law is shot through with moral considerations that are very difficult to ascertain and muddy the comparative waters considerably. In this case, however, the issue is not the offence itself, but whether and how a mental condition may affect culpability.

Katherine Parker (PhD candidate)

Article: 'Illicit Sex and the Female Researcher: Reflections from the Field'

In (2017) 6(2) *Feminists@Law* 1-20

Abstract: This article presents some initial methodological reflections from an ongoing programme of empirical research examining the risk taking behaviours of men who have sex with men in public sex environments in an urban area of North East England. Drawing upon an early career female researcher's experience of undertaking sixteen in-depth interviews with male participants, this paper seeks to critically explore the challenges that female researchers face when conducting interviews with men on topics related to sexuality and sexual risk behaviours.

Lee McConnell

Article: 'Assessing the Feasibility of a Business and Human Rights Treaty'

In (2017) 66(1) *International and Comparative Law Quarterly* 143-180.

Abstract: In light of a recent shift in dialogue to hard law standards in the domain of business and human rights, this article provides an in-depth examination of the viability of a business and human

rights treaty. It seeks to advance a valid theoretical model for a treaty that directly addresses non-State actors, explores the allocation of responsibility among multiple duty-bearers, and contemplates the scope, content, and enforcement of the potential obligations. By supplementing this analysis with analogies drawn from existing treaty regimes, the article aims to contribute positively to the normative development of international law in the field.

Alan Reed and D.Hughes

Book Chapter: 'Criminalisation of HIV Transmission: Anglo-American Comparative Perspectives and Optimal Reforms to Failure of Proof Defences'

In Chris Ashford, Alan Reed and Nicola Wake (eds) *Legal Perspectives on State Power: Consent and Control* (Cambridge Scholars Publishing, 2016) 247-283

Abstract: In this chapter Reed and Hughes note the 2015 Review by the Law Commission (England and Wales) of the Offences Against The Person Act 1861 and associated offences. Whilst that report held back from offering radical reform of the law pertaining to HIV transmission, the authors put forward an argument for a fresh and urgent legislative intervention in this area. Their analyses focuses upon failure of proof defences and draws upon Anglo-North-American perspectives to advance their critique. They conclude with legislative proposals that would enable the law to recognise greater management of risk, specifically in relation to condom usage and viral load management.

Rebecca Moosavian

Article: 'Jigsaws and Curiosities: The Unintended Consequences of Misuse of Private Information Injunctions'

In (2016) 21(4) *Communications Law* 98-134 (invited contribution)

Abstract: This article examines the unintended consequences of injunctions granted in misuse of private information (MPI) disputes. The MPI action enables successful claimants to obtain injunctions, often anonymised, to prevent publication of a story (or parts of it) that infringe upon their Article 8 privacy rights. This article considers cases such as *Giggs v News Group* and *PJS v News Group* which highlight the challenges of MPI injunctions; they may draw additional attention to disputed material, a phenomenon that has been colloquially termed the 'Streisand effect'. It affords specific attention to the phenomenon of 'jigsaw identification' which may result from MPI injunctions that only restrict the publication of specific parts of a dispute, such as the claimant's identity. It proceeds to discuss three primary reasons for unintended consequences in some MPI cases, including psychological reactance, social countering and the possibilities afforded by new online technologies. The article concludes with a close analysis of the recent Supreme Court decision in *PJS* where the judicial response was to modify the problem that MPI injunctions seek to address. Changing the purpose of such injunctions, and therefore the outcomes by which their efficacy is to be gauged, enables the courts to justify their continuation in the face of widespread publication of private information. But this reasoning process relies on newly constructed, tenuous distinctions between press/Internet dissemination and secrecy/intrusion elements of privacy, and it necessarily entails some sacrifice of the wider credibility of law.

Anne Creaby-Attwood with Chris Ince (Consultant Forensic Psychiatrist, Northumberland, Tyne and Wear NHS Trust))

Book Chapter: 'The sex offender with high functioning autism and the suitability of sex offender treatment programmes'

In Chris Ashford, Alan Reed and Nicola Wake (eds) *Legal Perspectives on State Power: Consent and Control* (Cambridge Scholars Publishing, 2016) 343-357

Abstract: The UK Ministry of Justice (MOJ), relying upon the research of Hanson et al (2009) have indicated that sexual offender programmes which follow the risk, need and reponsivity of offenders will lead to the greatest reduction in criminogenic recidivism. In light of this, the MOJ provide Sex Offenders Treatment Programmes which can be offered as part of a custodial sentence or as a requirement of a community penalty. Mainstream treatment programmes use a cognitive-behavioural approach concentrating upon the person's offending behaviour by restructuring attitudes that support or permit sexual offending, and addressing "previous dysfunctional behaviours". This work takes place within small groups and utilises pro-social modelling and victim empathy interventions. In 2011 an adapted suite of programmes were accredited by the MOJ to meet the needs of "intellectually disabled sexual offenders" (MOJ 2013). These programmes were specifically developed for men with IQ 60-80 with associated adaptive functioning deficits. Whilst current empirical data would suggest that sex offenders who receive such treatment either in prison or in the community reduce their post- treatment reoffending, this approach is challenging for offenders with an Autistic Spectrum Condition. The recognised criteria for Aspergers of no significant delay in spoken or receptive language or cognitive development (ICD 10) would make it unlikely that without an additional low IQ they could be included in an adapted programme. Additionally, a lack of socio-emotional reciprocity may impair utilisation of a programme, which is developed with an empathic intervention at its core.

Alison Howey

Article: 'The link between animal abuse, domestic violence and juvenile crime: an Anglo-American perspective.'

In (2016) *The Journal of Animal Welfare Law* (supplementary edition) 6-9

Abstract: This article provides a review of the Association of Prosecuting Attorney's 5th annual conference and aims to identify some of the key initiatives in animal cruelty legislation in the USA, and compare them to the current position in England and Wales. In particular, there is discussion and analysis of the growing recognition of the 'link' between animal cruelty, domestic violence and juvenile crime.

Tony Crook, **Sue Farran** and Emilie Roell

Research Report: 'Understanding Gender Inequality Actions in the Pacific: Ethnographic Case-studies and Policy Options' (ECOPAS report funded by DEVCO EU 2016)

Available via the EU bookshop: https://bookshop.europa.eu/en/understanding-gender-inequality-actions-in-the-pacific-pbMN0216385/downloads/MN-02-16-385-EN-N/MN0216385ENN_002.pdf?FileName=MN0216385ENN_002.pdf&SKU=MN0216385ENN_PDF&CatalogueNumber=MN-02-16-385-EN-N

Abstract: The study was commissioned and overseen by Marina Marchetti, and was conducted by a research team directed by Tony Crook, Centre for Pacific Studies, University of St Andrews, under the auspices of the Framework 7 funded ECOPAS project (European Consortium for Pacific Studies, 2012-15). The Pacific is a large and highly diverse region with heterogeneous social, religious and political histories, and the study was able to match the scale of the task through social science fieldwork and ethnographic case-studies in ten countries across the three sub-regions of Melanesia, Micronesia and Polynesia.

Following delivery of the report & presentation of findings and recommendations in Brussels at the end of 2015, the report was officially communicated to the EU Delegation in the Pacific by both EEAS and DEVCO, and is now informing the formulation of EDF programming on gender issues.

Daniel Fenwick

Book Chapter: 'An introduction to the nature of rights and liberties',
In *Fenwick on Civil Liberties* (Routledge 2017) edited by Helen Fenwick, pp 7-27

Abstract: This chapter introduces key theoretical and legal concepts referred to throughout the work, in particular the nature and operation of civil liberties and human rights and their legal protection in the UK.

Book Chapter: 'Private information and media freedom'
In *Fenwick on Civil Liberties* (Routledge 2017) edited by Helen Fenwick, pp 691-787

Abstract: This chapter sets out the legal and regulatory framework governing private information relevant to media bodies and relevant human rights litigation. The chapter considers the regulatory regime governing broadcast media and news-media, as well as the development of the tort of misuse of private information.

Book Chapter: 'State Surveillance'
In *Fenwick on Civil Liberties* (Routledge 2017) edited by Helen Fenwick, pp 788-832

Abstract: This chapter examines the legal framework governing state surveillance in the UK and key requirements of the European Convention on Human Rights and human rights. The chapter sets out the primary surveillance powers in the UK as regards interception of communications, covert surveillance and property interference.

Jacinta Miller

Book Chapter: 'The Influence of International Human Rights Law on the Right to Health Jurisprudence of the European Region'
In Carla Buckley, Alice Donald & Philip Leach (eds) *Towards Convergence in International Human Rights Law. Approaches of Regional and International Systems*. (Brill/Nijhoff, 2016) 246 - 274.

Abstract: The aim of the chapter is to examine the extent to which the right to health language, concepts and approaches of Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) are mirrored in health jurisprudence in the European region. In particular the approaches of the European Court of Human Rights, the European Committee of Social Rights, European Committee for the Prevention of Torture and the Court of Justice of the European Union (CJEU) to issues of health and rights are considered. The chapter suggests that with the exception of the CJEU approach, there is evidence of an emerging consensus of approach in the European region beyond the use of the phrase 'right to health' that can be mapped to the conceptual framework associated with the international right to health. That emerging consensus on the right starts with the language, associated with approaches in international law to categorisation of: the content of the right as freedoms or entitlements; obligations within the right as positive or negative obligations which can be further described in the terminology of respect, protect and fulfil; and policy questions of what should be made available and who should have access to what is available. Non-discrimination and the requirement to consider the additional barriers facing vulnerable groups in accessing their right to health with reference to these frameworks is another common theme within the jurisprudence. The linkage of non-discrimination and concepts of vulnerability with these approaches hint at a more nuanced stance by the courts to state discretion in the context of finite resources, with the greatest deference afforded to the state on policy questions related to what entitlements to make available. However the extent to which the language of the international right to health is adopted is variable across the European judicial and quasi-judicial bodies suggesting that there is still more to be done in developing acceptance of, as well as understanding of the right to health.

Natalie Wortley

Case note, 'Unfit to Plead or Unfit to Testify'
In (2016) 80(6) *Journal of Criminal Law* 391-396

Abstract: This case note discusses the scope and interpretation of the test for unfitness to plead, the stage at which a finding of unfitness may be made, and the interplay between the unfitness to plead process and s.35 of the Criminal Justice and Public Order Act 1994.

Carole McCartney

Book chapter: 'Trust and the International Exchange of Forensic Information'
In C. McCartney and S. Hugnagel (eds) *Trust in International Police and Justice Cooperation*, (Hart Publishing, 2017) 169-191

Abstract: While policing and judicial cooperation across international borders has been an expectation for many years, increasingly, strategies to combat terrorism, organized and serious crime, incorporate the exchange of forensic information. While informal forensic cooperation is not wholly novel, often having been undertaken on an ad hoc basis in response to a particular event, exchange capabilities and initiatives are now numerous and formal bilateral and multi-lateral agreements to exchange forensic data between countries proliferate apace. Since the Prüm Treaty of 2005, automated exchange of DNA profiles and dactyloscopic data (fingerprints) has become mandatory across the EU. Such increasing demand and capacity for the extra-territorial exchange of forensic information between law enforcement professionals and agencies, mean that there are growing numbers of criminal investigations where evidence may have been collected, examined, or interpreted across national borders. As well as presenting technological challenges, mutual assistance in evidence-gathering and utilization pose important and urgent questions. Attempts to regulate case-based forensic practice across the EU have barely commenced and time is still needed for regulation to 'bed-down'. Yet as forensic technologies become more sophisticated, there is the threat that the technology progresses faster than the law, social and political systems can utilise, and importantly, regulate them. Those developing the technology (scientists), and those charged with utilising it (police and legal authorities), however, (understandably) focus upon technical issues, rarely interrogating the complex inter-relationship between trust, confidence, control, security, inter alia. The social and ethical challenges facing the utilisation of forensic information shall thus be the focus here, considering how the 'integrity' of forensic information plays an essential role in the production and maintenance of 'trust': a critical factor in international policing cooperation.

Gary Edmond and Natalie Wortley

Article: 'Interpreting Image Evidence: Facial Mapping, Police Familiars and Super-recognisers in England and Australia'
In (2016) 3(2) *JICL* 473-522

Abstract: London's Metropolitan Police has recently established a team of "super-recognisers" to identify suspects. Limited attention has been given to the use to which their evidence may properly be put during investigations, formal interviews and prosecutions. This article explores the ways investigators have approached the identification of persons of interest in crime-related images and the use of this evidence at trial. It explains that the courts have largely been inattentive to scientific research; particularly notorious difficulties and the (un)reliability of much image interpretation and comparison. Following a review of admissibility jurisprudence in England and Australia and relevant scientific research, it concludes that the strategic use of those with enhanced abilities - to recognise familiar faces and to match unfamiliar faces - would improve the reliability of identifications and offer the potential to circumvent the dangers of unreliability, bias and contamination that threatens current police and expert practice.

Sue Farran with Jennifer Corrin (University of Queensland)

Article: 'Developing Legislation to Formalise Customary Land Management: Deep Legal Pluralism or a Shallow Veneer?'

In (2016) *Law and Development Review*. DOI: <https://doi.org/10.1515/ldr-2016-0017>

Abstract: One of the many post-colonial claims of indigenous people is the re-assertion of their rights over their land and its resources. Colonial history has created for many people a plural legal system and this, combined with social and economic changes, presents new challenges for development in the realm of traditional or customary land. This article focuses on the Pacific island state of Vanuatu, formerly known as the New Hebrides. At independence in 1980 allodial title to all land was returned to the custom owners while colonial forms of land law were also retained. In 2013, after nearly a decade of concern about land alienation, the Vanuatu government introduced the Custom Land Management Act. This article critically analyses this attempt to safeguard customary law and customary institutions in formal, written law, considering in particular the implications for law and development in a plural land law regime.

Frances Hamilton

Article: 'Strategies to Achieve Same-Sex Marriage and the Method of Incrementalist Change'
In (2016) 25 *Florida Journal of Transnational Law and Policy* 121-153.

Abstract: Following the decision of the Supreme Court in *Obergefell v. Hodges*,¹ all U.S. states are required to license marriages between same-sex couples. This decision, although having the effect of immediately introducing same-sex marriage across the U.S., was taken by an unelected court and in the absence of a democratic mandate. Many other countries worldwide have yet to enact same-sex marriage. This piece considers an appropriate strategy for enacting lasting change for those in favour of same-sex marriage. Comparative constitutionalism is used in order to learn from the experience of other nations in tackling similar social and legal issues. After an analysis of recent international examples this article recommends the use of slow incremental change. This is often characterised by an intermediate stage of civil partnership legislation and by use of the legislative rather than court-based approach. This method allows influence upon and engagement with public opinion, which is useful to ensure successful change. This article demonstrates by way of case studies that countries which do not follow this method are more likely to see a backlash in public opinion and a subsequent legislative reversal of a court judgement. Alternatively, lack of public support could lead to less than substantive equality for same-sex couples.

Marcus Lee (PhD candidate)

Article: 'Sustainable Development Governance of the Energy Sector in Malaysia,

In (2016) 9(9) *OIDA International Journal of Sustainable Development* 57-70 (The Journal of Ontario International Development Agency)

Abstract: The subject of this paper is about sustainable development governance, with a particular focus on the Malaysian energy sector. This paper starts by delving into how sustainable development is defined and perceived. The paper also discusses whether sustainable development is now ready to be considered a principle of law or whether it remains a concept. The link between sustainable development and governance, in particular how governance contributes to the objectives of sustainable development is explored subsequent to the themes above. Following a discussion exploring key principles, themes and concepts, a brief country profile is

given to cast a picture of the stage of growth Malaysia is in and explain Malaysia's development. The energy sector is also then discussed along with the challenges of the key renewable energy sources utilised in Malaysia. The penultimate discussion involves Malaysia's strategy for the energy sector, including how it relates to the United Nation's Sustainable Development Goals. Malaysia's Sustainable Consumption and Production initiative, which is part of Malaysia's strategy for the energy sector, is also given focus. Rounding off the considerations made in this paper is an evaluation of possible theoretical approaches that give a framework view and understanding of how Malaysia may address its sustainable development challenges of the energy sector.

Tracy Kirk (PhD candidate)

Article: 'The Named Person Scheme'

In (2016) 469 *SCOLAG* 216-217

[http://www.scolag.org/sites/default/files/full-journal/2016_SCOLAG\(469\)_213-236.pdf](http://www.scolag.org/sites/default/files/full-journal/2016_SCOLAG(469)_213-236.pdf)

Abstract: Laws seeking to protect the vulnerability of children have long been a feature of the Scottish Legal System. The unique Children's Hearing System prides itself on 'making sure that all children and young people are cared for and protected, while their views are heard, respected and valued'. Despite these clear values, the decision by the Scottish Executive to introduce the Named Person Scheme to promote the wellbeing of each and every child and young person has caused much controversy. While much has been written about how such a scheme breaches the rights of parents, less has been said about the beneficial role such a concept can have in promoting the rights of young people in matters directly affecting them. Arguably, the Named Person Scheme simply gives legal significance to roles already fulfilled by head teachers and health visitors, by ensuring the principles of GIRFEC are effectively promoted throughout Scotland. In this paper I refer to how this promotion of children's rights by the Scottish Government, by returning to the founding principles of the Children's Hearing System, should be welcomed and used to engage in discussion about children's rights. Increased recognition of children's rights does not have to mean a reduction in parental rights.

Vickers, T, J Clayton, **Hilary Davison**, **Lucinda Hudson**, MA Cañadas, P Biddle, S Lilley, G Fletcher and M Chantkowski

Research Report: 'New Migrants' in the North East Workforce: Final Report'. 2016 Nottingham Trent University.

The full report is available online at: <http://tinyurl.com/NEmigrants> and further materials including summaries of findings translated into French, Arabic, Farsi, Tigrinya, Polish and Romanian will be available at a new website <http://www.migrantworkinglives.org> due for launch in January 2017.

Abstract: Between 2013-16 research examined the position and experiences of 'new migrants' in the workforce in North East England, carried out by Nottingham Trent and Northumbria Universities, the International Community Organisation of Sunderland and the Regional Refugee Forum North East. Methods included a survey completed by 402 migrants, in-depth interviews with 40 migrants, interviews with 12 key stakeholders, and a policy seminar attended by more than 50 people from a range of backgrounds.

Our primary focus was refugees who arrived since Dispersal began in 1999 and migrant workers from the countries in Eastern Europe that joined the EU in 2004 and 2007— one quarter of survey respondents were refugees with some form of leave to remain, one quarter were asylum seekers, one quarter were EU migrants, and the remainder came from a variety of different immigration routes. The most frequent countries of origin were Romania (15%), Sudan (12%), Poland (11%) and Bangladesh (7%).

Following an outline of the background and research methodology, the report presents some key results regarding patterns of work and worklessness among respondents, before considering some

of the barriers and constraints respondents described. Illustrative case studies are presented alongside this summary, and the report concludes with recommendations for policy and practice.

Carole McCartney

Book Chapter: 'DNA and Identification'
In M. Maguire & T.J. Holt (eds) *O* (Routledge, 2017)

Abstract: : This chapter examines the use of DNA within criminal justice systems, with special reference to the UK, where DNA profiling originated and became quickly embedded with the criminal process. The creation of DNA databases and the attendant issues raised will be considered. A critical overview will sketch developments that have 'stretched' the science of forensic DNA profiling, occasionally beyond the ability of the courts to rely upon it, before posing questions of legitimacy, including social and ethical concerns. A weighing of the benefits brought by forensic DNA profiling necessarily involves reflection upon mistakes of the past, and consideration of whether there is now the foresight, ability, and will to prevent abuses and augment the advantages of forensic DNA profiling in the future.

Conferences Papers

Rebecca Moosavian

'Power/knowledge Dynamics in Attorney General's Iraq Advice' Invited paper
At 'After Chilcot' conference, 8 December 2016. Hosted by Liverpool University in London

Abstract: This paper draws upon and analyses extensive material from the Report of the Iraq Inquiry led by Sir John Chilcot. It focuses on the domestic political-constitutional processes surrounding the production of the Attorney General, Lord Goldsmith's advice in March 2003 that military action in Iraq would be internationally lawful. Because the AG's advice was viewed as definitive within UK constitution, the UK's involvement in Iraq hinged upon his view.

This paper undertakes a Foucauldian-influenced critique of the processes surrounding the creation of the AG's advice, specifically drawing out the power/knowledge dynamics at play therein. It starts by outlining Foucault's power/knowledge thesis which claims that power and knowledge enjoy a reciprocal relationship; the exercise of power generates knowledge and, in turn, knowledge engenders power.

Sarah Morse

'Building Streetlaw into the Curriculum'
At the UK and Ireland Streetlaw Best Practices Conference, University of Birmingham, 7 and 8 September 2016.

Abstract: This paper considered the value and role of Streetlaw as an extra or intra curricular activity. In particular the potential advantages and disadvantages of moving Streetlaw into the curriculum will be explored in terms of:

- module design;
- learning outcomes;
- resource implications; and
- assessment

Clare Sandford-Couch

'Changes in late-medieval artistic representations of Hell in central and northern Italy: a visual trick?',

At the Art of Law: Artistic Representations and Iconography of Law & Justice in Context from the Middle Ages to the First World War conference, which was held in the Groeningemuseum, Bruges on 16 - 18 January, 2017, to coincide with the museum's exhibition The Art of Law: Three Centuries of Justice Depicted. The conference focused on imagery in its legal and art historical contexts.

Abstract: This paper which was an invited contribution and opened the conferences suggested that it is possible to see the emergence of changes in values and punishment practices, even the underlying philosophies - in changes to the iconography of the fate awaiting those condemned to hell in certain Last Judgment scenes from northern Italy, c.1300-1400. The paper outlined a disconnect between these images and the contemporary realities of justice system practice, and put forward a hypothesis that underlying this change in artistic representation was a jurisprudence in a process of transition; and that in providing a visible reminder to citizens of the potential consequences of criminality, these Last Judgment scenes served to bridge a gap between justice practice and theory. The conference was truly multidisciplinary, and attracted speakers from the UK, Europe, USA, and India.

Clare also chaired a session on 'Iconography in Illuminated Manuscripts (XIII-XVI century)'.

Conall Mallory

'The Implications of the Iraq Inquiry on a Soldier's Right to Life' (December 2016)

At 'After Chilcot: Evaluating the Legal Implications of the Iraq Inquiry', University of Liverpool, 8 December 2016

Abstract: The Iraq War has given rise to a wealth of litigation concerning the application of human rights laws to overseas military ventures. One of the most contentious issues within this jurisprudence has been the existence and application of a soldier's right to life, with families of British service personnel killed in Iraq having alleged failings by the government in respect of both the substantive and procedural obligations within Article 2 of the European Convention on Human Rights. This jurisprudence culminated in the 2013 case of *Smith v Ministry of Defence* where the UK Supreme Court held that although soldiers were entitled to benefit from human rights laws, a stringent test would apply when the State was accused of a breach of the right to life. While the rigor of this test has appeared to stifle subsequent litigation the recent Iraq Inquiry may yet have profound implications on the justiciability of a soldier's right to life. Drawing extensively on documentation and testimony released by the Iraq Inquiry, as well as Sir John Chilcot's findings, this paper ultimately aims to provide an updated assessment of a soldier's right to life both in domestic courts and at Strasbourg. Through a re-examination of the guidelines issued by the Supreme Court in *Smith*, an assessment of the practice of the European Court of Human Rights in relation to Article 2 and consideration of the role of public inquiry findings in litigation, this paper explores the legal implications of the Iraq Inquiry on a soldier's right to life.

Mohamed Badar

'Counter Violent Extremism: The Case of IS and Boko Haram'

At the 7th meeting of Parliamentarians for Global Action's Working Group on the Universality of the Rome Statute of the International Criminal Court in the Middle East and North Africa, Dakar, Senegal, 8 December 2016

Abstract: The ideology and actions of certain militant groups in the Middle East are often condemned as a perversion of Islamic precepts. In order to achieve a theologically ideal society these groups espouse Takfirism, a minority ideology which endorses violence and in particular advocates the killing of other Muslims declared to be unbelievers. These groups justify their words and deeds with direct quotations from the Qur'an and the Sunna, which are the sources of Islamic law (Shari'ah), as well as by citing historical precedents such as the Khawarij movement and Ibn Taymiyya's fatawa. This paper aimed to analyse how these groups (and in some cases state actors) defend their actions in legal terms and how mainstream Islamic scholars respond to what they consider to be doctrinal deviations.

The outcome of this conference paper was submitted to the *Arab Law Quarterly* (Brill Martinus Publisher) and was accepted for forthcoming publication in Autumn 2017.

Carol Boothby

'Quality Assurance & Supervision in Clinic'

At a conference at London South Bank University on 11th November. Carol was part of a panel and presented on the conference theme, which was: 'Clinical Legal Education Conference: Quality & Supervision - What's the Point of Supervision ?'

Abstract: The Student Law Office has been in existence for over 20 years. All students currently on the MLaw Degree participate in the clinic as the culmination of their integrated theoretical and practical learning. They provide vital legal services to the community while developing a deep understanding of law, justice and professionalism. Put broadly, the key objectives of the SLO are to:

1. Break down barriers between academic study and real world engagement
2. Provide access to justice at a time when that access is increasingly at risk
3. Influence the development of law and policy
4. Enable students to develop as graduates, professionals and people
5. Disseminate best practice on a national and international stage

This presentation outlined the issues with quality assurance and supervision in clinic.

James Gray

'J G Ballard: law literature and the Built Environment'

At the Law, Literature and Humanities Association of Australasia Conference in Hong Kong 8-10 December

Abstract: In an interview in 2003, J G Ballard spoke of the social geography of "real England", the England that Ballard was able to observe from his suburban home in Shepperton and that gave rise to one meaning of the adjective 'ballardian'. "That's the real England - the M25, the world of business parks and industrial estates and executive housing, sports clubs and marinas, cineplexes, CCTV, car rental forecourts." Ballard's fascination with these uncelebrated landscapes "where it was impossible to borrow a book, attend a concert, say a prayer, consult a parish record or give to charity", the "edgelands" and commercial hinterlands of urban expansion, points of transition such as airports, the "motion sculptures" of urban road networks, retail developments, shopping malls, multi-storey car parks and (famously) abandoned swimming pools features particularly in his novels of the 1970s. *Crash*, his notorious 1973 novel reflecting on mediatisation of violence and death, *Concrete Island* (1974) a re-imagined *Crusoe* cast adrift in a triangular pocket of forgotten shrubland at the intersection of a complex of motorways, and the recently filmed *High Rise* (1975) which charts the decent into chaos and warfare of the inhabitants of a chic apartment block. The theme of human isolation in these and later novels was related to Ballard's conviction that art must embrace science, technology, advertising and communications. Ballard anticipated that under late capitalism these four features of modern life would increase our

isolation, that our homes would become TV studios from which to broadcast our lives to strangers in the outside world and that there would be a stronger conjunction between politics, entertainment and celebrity. Ballard's work - particularly that of the 1970s has affinities with the situationist Guy Debord's concept of the spectacle, the idea of a permanent present and of the "unrealism of the real society", a world in which the meaning of connections with others is merely a representation mediated by images. This paper explores the relevance of Ballard's fiction to law and literature, in particular what it might tell us about how our perception of law and social order is mediated by the psychology of urban living and the built environment.

Clare Sandford-Couch

'The judge, the bench, and the wardrobe: the performance of legal power.'

At the Law, Literature and the Humanities Association of Australasia Conference 2016, at the University of Hong Kong, December 2016. This paper as part of a panel presentation with academics from University of South Australia and Australia National University, Canberra.

The papers in the panel explored the performance and performativity of legal power by looking at representations of the judge in his courtroom, the bench on which he sits, and the clothing that he wears.

Abstract: My paper addressed the judicial wardrobe, looking at how judicial clothing acts to set him apart from others in the courtroom, and examines how legal dress can not only represent the office of the judge but also constitutes a visual representation of his authority and so acts to both construct and perform his legal professional identity.

Mohamed Badar

'Islamic Law: Segregation or Integration into the International Legal System'

At the Islam and International Criminal Justice Workshop organised by International Nuremberg Principles Academy, Nuremberg, 14 October 2016

Abstract: There have been many legitimate condemnations of the western origins and nature of international (criminal) law and its application by international criminal courts and tribunals. The question that remains, in what way can other legal systems be recognized in it, or what can be the contribution of the knowledge on these systems for the international legal community. The main hypothesis of this research is that there is a way of bringing the Islamic legal tradition to the International Criminal Court. Not so much in terms of filling lacunae in procedural law as those seem to have been largely dealt with by applying mostly principles from common law and civil law systems, but in terms of symbolic recognition of Islamic law's core principles as has already happened by the International Court of Justice to bring more legitimacy in special conflicts involving Muslim states. The misapplications of shari'ah have been many and varied, not only by states, but also by non-state actors and Islamist militants groups. Against this background, my contribution aspires to draw a clear picture of the core principles of Islamic law in the relevant aspects and unveil its many similarities with international criminal law principles in an effort to provide international legal practitioners with the understanding needed to better deal with conflicts in Muslim majority states.

The outcome of this presentation was accepted for publication in *Islam and International Criminal Justice: Theory, Practice and Beyond* (Publisher: International Nuremberg Principles Academy, Nuremberg Germany Summer 2017

Jill Alexander and Carol Boothby

'The Impact of clinical education on employability'

At the Society for Research into Higher Education (SRHE) Conference, Newport, Wales 7-9th December

Abstract: The employability imperative in legal education is part of the more general landscape in the UK where Higher Education Institutions (HEIs) are placing increasing emphasis on the employability agenda and the "skills" that can be transferred from degree-level study into the workplace. Certainly, current political and business discourse has very firmly positioned the responsibility for employability with HEIs. They place great emphasis on "employability" though make no attempt to describe what that might be or how it can be achieved. This paper outlines findings from a qualitative study into perceptions of the role clinical education plays in influencing employability.

Tracy Kirk (PhD candidate)

'Competence, Capacity, Consent and Assent in Mental Health Research with Children and Young People' (invited paper)

At the launch of the Child Orientated Mental Health Intervention Centre (COMIC), York, 9th January 2017

Abstract: There is much to be gained from mental health research involving young people and in times of increasing austerity it is vital that resources are used effectively to maximise the health and well being of our young people. With research showing that over half of mental health problems in adult life (excluding dementia) start by the age of 14 and seventy-five percent by the age of 18 (Department of Health, Future in Minds), it is imperative that we use young people in our mental health research. However, there are many legal and ethical issues faced by researchers which restricts the use of adolescents in key mental health projects. Exploring the key terms of competence, capacity, consent and assent in relation to adolescents, this presentation is the underpinning for a joint paper with University of York's Dr Lina Gega: 'Ethical and Legal Issues in Involving Under 16's in Mental Health Research'.

Michael Stockdale and Adam Jackson

'Expert Evidence and the Criminal Procedure Rules / Practice Directions'

At the 10th Anniversary Symposium for Centre for Evidence & Criminal Justice Studies, Northumbria University, 28th October 2016, Newcastle upon Tyne.

Abstract: This paper was delivered at the 10th Anniversary Symposium for the Centre for Evidence and Criminal Justice Studies (CECJS). The paper built on previous CECJS research in the area of expert evidence including Michael Stockdale's Old Bailey Lecture to the Criminal Bar Association and the article "Expert Evidence in Criminal Proceedings: Current Challenges and Opportunities" by Michael Stockdale and Adam Jackson, published in the Journal of Criminal Law (2016, 80(5), 344-363). The paper provided an update on the implementation of the amended Criminal Procedure Rules and Practice Directions in relation to expert evidence in criminal proceedings. It considered the small amount of recent case law in this area and suggested alternative means of implementing the spirit of the rule changes.

Tim Wilson

'Brexit'

At Brexit academic conference, 10th November 2016, Portcullis House, Westminster. Invited panel member with discussants from Lancaster, Liverpool, Loughborough, The OU and Oxford universities for an audience of academics, RCUK representatives and parliamentary researchers.

Abstract: Discussion focussed on three themes: the post-Brexit need for effective criminal justice and security cooperation; the impact of Brexit on global influence of the U.K.; and the need for a systematic approach to Criminal justice/security cooperation (e.g. access to European Arrest Warrant is critical if offenders are identified biometrically) underpinned by institutional resources (e.g. Europol and Eurojust) and compliant with universal rights.

Other

Mohamed Badar was invited to a workshop on the theme of 'Reintegration Foreign Fighters: Deradicalisation and Desistance'. The main aims of this one day workshop were to bring together 40 academics and practitioners from statutory and third sector organisations to discuss how best to reintegrate those who have been involved in overseas conflict, at Lancaster University, 26 January 2017

The workshop was organised around four sessions each guided by one of the questions below.

1. What can we learn from historical mobilisations of 'foreign fighters'?
2. What are the primary challenges to successful reintegration?
3. What has been most effective in supporting disengagement?
4. What challenges does the ongoing conflict in Syria pose?

Chris Ashford, Alan Reed and Nicola Wake edited a collection entitled *Legal Perspectives on State Power: Consent and Control* (Cambridge Scholars Publishing, 2016) and provided the 'Introduction' 1-7

Abstract: The issue of consent and criminal law commonly focuses on consent in sports, sexual activity, and medical treatment. The notion of consent and the influence of state control in this context, however, are pervasive throughout the criminal justice process from the pre-trial stage to rehabilitation. This edited collection charts an important and original pathway to understanding these important issues, pre-, during, and post-trial, from a range of perspectives, including doctrinal, socio-legal, intersectional, medico-legal, feminist, critical legal, and queer theoretical viewpoints. The collection addresses the complex inter-relationship between consent and state control in relation to private authorisation and public censure; sexual behaviour; the age of consent; queering consent; Pro-LGBTI Refugee cases; rape by fraud; male rape; undercover policing; prisons and consent; compulsory treatment for sex offenders; sex offenders with high functioning autism and the suitability of sex offender treatment programmes; and, the criminalisation of HIV transmission. This multi-disciplinary approach draws together a variety of experts from legal and medical academia and practice in order to confront the issues raised by these subjects, which are likely to remain controversial and in need of reform for years to come.

Carol McCartney with S. Hugnagel edited a collection entitled *Trust in International Police and Justice Cooperation*, (Hart Publishing, 2017) in the Oñati International Series in Law and Society, and provided the Introduction

Abstract: The use of extra-territorial intelligence is growing among security, border, and public agencies. Internationally, rapidly evolving efforts to tackle transnational crime entail the exchange of intelligence across jurisdictions and state borders as well as the 'linking' of law enforcement operations. This book provides a number of different perspectives from across Europe, Australasia and Canada to examine recent cooperation experiences and the challenges faced in practice.

The book brings together scholars from a range of legal and criminological fields to examine the legal imperatives and social parameters that shape international police and justice cooperation and highlights the importance of both trust and clear legal rules to ensure effective cooperation. It focuses on areas where cooperation is now mandated, but where significant issues are raised, including the international and regional methods of information and intelligence exchange and challenges to human rights protection; the coordination of international and regional exchange of evidence, such as forensic bioinformation; police cooperation in international investigations and the added value of formalising investigative strategies across jurisdictions regionally and internationally and the operation, accountability and legitimacy of organisations and institutions of 'cooperation' in law enforcement and specific international policing 'missions'.

Michael Smith researched and drafted the paper presented by Lord MacKay at the Eldon Lecture, presented at Northumbria University in late October 2016 entitled: 'Criminal Trial on Indictment in England and Scotland: A comparative view from Hadrian's Wall'

Abstract: In his Lord Chancellor Eldon lecture, The Rt Hon Lord Mackay of Clashfern, himself a former Lord Chancellor of Great Britain and Lord Advocate (senior Law Officer) of Scotland compared and contrasted some outstanding features of cases brought on indictment in the two jurisdictions. Lord Mackay concentrated on present law and practice and took a topical approach.

Neil Harrison prepared a report for the Hungarian government on the topic of 'Centralised Procurement in the UK with a focus on the NHS' December 2016.

Abstract: This report explored a number of areas relating to central procurement practices in the UK including the implementation of the EU directive on procurement, statistical data on the activities of a range of centralised public procurement entities, plans for modernisation and national experiences identifying good and bad practices which might be useful in informing Hungary's aims of modernising its own procurement procedures.

Alistair Rieu-Clarke was invited to Tehran and Yazd in Iran 5-7 November 2016 by the Iranian Ministry of Energy and UNESCO to support a project which aims to examine the applicability of laws relating to transboundary aquifers, to shared aquifers in Iran.

Sue Farran with Niklas Hultin (George Mason University, USA) edited a Special Section entitled 'Legal Pluralism and its Contribution to the Global South-Global North Paradigm' in the (2016) 48(3) *Journal of Legal Pluralism and Unofficial Law*, bringing together papers presented at the 2015 Law and Society conference in Seattle, at a session organized by the co-editors under the title theme of this collection.

Kayleigh Richardson had a piece in "The Conversation" in December 2016 which was subsequently republished by the Newcastle Journal. The link to the original article is <https://theconversation.com/how-legal-aid-cuts-are-putting-extra-strain-on-family-courts-67592>

Abstract: The objective of LASPO was to substantially reduce the civil legal aid budget in order to assist the Government with their plans to reduce public spending. This article considers whether those savings have actually been achieved in the context of family law cases or whether the costs have simply been passed elsewhere. The article argues that the burden has been passed to the Family Court System who now have to deal with an increase in applications by Litigations in Person (which take significantly longer than those cases where parties are represented) and an

increase in applications for Domestic Abuse Protection Orders (in order to meet the evidence criteria for legal aid).

Sue Farran was asked to provide research insights for a BBC Current Affairs documentary series focusing on young women giving birth into hardship or social injustice in the Pacific island country of Kiribati.

Angela MacFarlane had a piece in The Conversation entitled "Wheelchair vs buggy": a step in the right direction for people with disabilities?' 19 January 2017, commenting on the recent court case of FirstGroup Plc (Respondent) v Paulley (Appellant) and the responsibility of bus drivers viz wheel chair spaces on buses.

Tim Wilson gave oral evidence to the House of Commons Justice Select Committee's inquiry on Implications of Brexit for the justice system (co-witnesses Francis FitzGibbon QC, Chair, Criminal Bar Association and Michael Gray, Founding Partner, Gray and So Solicitors, on behalf of the Criminal Law Solicitors' Association), 10th January 2017, Portcullis House, Westminster. All three witnesses emphasised that there were no alternative international criminal justice cooperation measures that could equal the speed, efficiency and scope of the EU arrangements for providing justice for victims and protection against serious crime, including terrorism. A record of the session was published by the Justice Select Committee on 23rd January 2017 at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/implications-of-brexit-for-the-justice-system/oral/45203.pdf>

Adam Jackson, Sophie Carr, **Gemma Davies**, Derek Johnson, **Emma Piasecki**, **Michael Stockdale** and **Tim Wilson** provided written evidence from the Northumbria Centre for Evidence and Criminal Justice Studies, to the House of Commons Justice Select Committee's inquiry on Implications of Brexit for the justice system

This evidence was published by the Justice Committee on 29th November 2016 at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2015/brexit-and-the-justice-system-16-17/publications/>

Mohamed Badar gave an interview to the Voice of Islam - Drive Time Show Radio on 'Sectarianism in Islam: A Recipe for Disaster' on 15 December 2016
<http://voiceofislam.co.uk/podcasts/drive-time-podcast-15122016/>